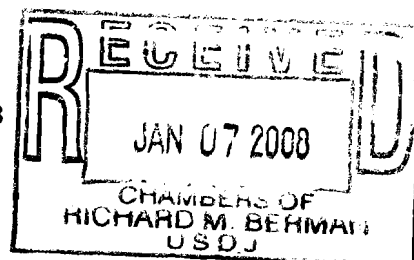


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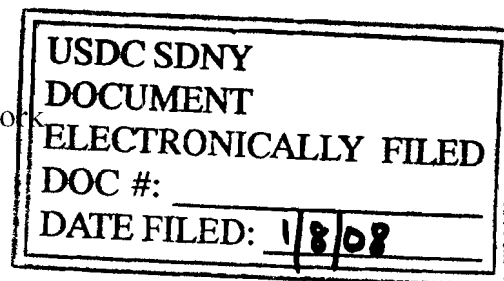
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JANUARY 4, 2008

Honorable Richard M. Berman
United States District Court for the Southern District of New York
500 Pearl Street
New York, NY 10007



Re: Circa Inc. v. Mel Bernie and Company, Inc.
United States District Court for the Southern District of New York
Civ. No. 07 CIV 10265 (RMB)

Dear Judge Berman,

This firm represents the plaintiff, Circa, Inc., in this declaratory judgment action. We write in response to the December 28, 2007 letter to Your Honor from Marvin Gelfand, counsel to the defendant. Defendant's responsive pleading was originally due for filing in this action on December 4, 2007. Mr. Gelfand requested that we consent to an extension of the time to respond until January 4, 2008, which we did. We understood from Mr. Gelfand that the response would almost certainly be an answer filed with a motion for change in venue or a motion to dismiss. However, there was no request for a pre-motion hearing until December 28.

Plaintiff brought this action because of repeated threats by the defendant, which were disruptive to plaintiff's business and future business plans, combined with settlement discussions that Plaintiff considered unsatisfactory in light of the facts disclosed to Defendant by Plaintiff. Regarding the motion described in Mr. Gelfand's letter, plaintiff contends that the Southern District of New York is the proper venue for



this matter. Plaintiff's corporate offices are in New York. Plaintiff registered the name "Circa, Inc." with the State of New York, and plaintiff's primary advertising vehicle is the New York Times. Thus, any consumers who were supposedly "confused" by plaintiff's use of the name "Circa" would not likely be located anywhere in California, they would be in this District. In addition, the witnesses with knowledge of the use of the name "Circa" by plaintiff are located in this District. In any event, plaintiff denies "forum shopping." Had Defendant filed a case in California, plaintiff would be seeking a transfer to this District Court.

We have conferred with Mr. Gelfand in preparation for the Rule 16 conference, scheduled for January 15, 2008. We were not able to agree on the venue for this litigation, as Mr. Gelfand correctly reports. We did agree that discovery activities should be stayed until the Court determines whether it will retain jurisdiction. That course of action still appears to be prudent. However, plaintiff would prefer that the motion to dismiss or change of venue proceed as soon as possible, so that this matter can be resolved as quickly as possible. Therefore, we respectfully suggest that the Court permit the defendant to file its motion immediately, in the absence of a pre-motion hearing, and that the Rule 16 conference be adjourned pending the outcome of the motion.

Respectfully submitted,

Robert J. Basil

Cc: Marvin Gelfand, Esq. (via fax 310-550-7191)
 Nicholas Fortuna, Esq. (via fax 212-213-3318)
 Nicholas Gallo, Esq. (via fax 212-692-0875)

	
IN LIEU OF THE CONFERENCE ON 1/15/08	
THE COUNSEL ARE DIRECTED TO APPEAR FOR A PRE-MOTION / SCHEDULING CONFERENCE ON 1/11/08 AT 10:30 A.M.	
SO ORDERED: Date: 1/5/08	 Richard M. Berman, U.S.D.J.